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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/178,840	10/26/1998	ANGELIKI OSTE TRIANTAFYLLOU	P/2432-19	5038

24998 7590 05/02/2003

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L STREET NW
WASHINGTON, DC 20037-1526

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EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/178,840

Applicant(s)

Traintafyllou

Examiner

Curtis E. Sherrer

Art Unit

1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 30, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-14, and 21-25 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-14, and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Part III DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 5, 13, 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is indefinite because there is no antecedent basis for the boiling step.

Claim 5 is indefinite because it is unclear where in the process a malted cereal is used. Similarly, claim 13 includes Markush group members that appear to be outside the scope the invention claimed in claim 1.

Claim 22 is indefinite because it is unclear how the beta glucanase is inactivated yet beta glucanase is present. Because of the indefiniteness the claims they (claims 22-25) are unsearchable.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9, and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott (Jnl. of The Institute of Brewing, Vol. 78, No 2, pp. 179-86) in view of applicants' admissions (Page 1 of specification).

Scott has been previously discussed. Scott is now relied on for teaching the inactivation of beta glucanase by use of milled barley that was heated for 3 hours to 65 C. Papain (protease) and alpha amylase (starch degrading enzyme) was added. The result of this process was "high yields of beta glucan than extracts form ethanol-inactivated barleys. (Last ¶ on page 185, col. 1). The mash is prepared form using 50 grams of barley and 400 ml of water or a 12.5 % by weight solution. The mashing temperature was as stated above. Because the enzyme is inactivated, and therefore, the process is substantially identical (Scott inactivates while mashing, and applicants inactivate and then mashes) and the final concentration of beta glucan is inherently the same.

5. Scott teaches that cited above but does not clearly teach where the grain is first inactivated and then mashed, but rather it appears that these two steps occur simultaneously. It would have been obvious to those of ordinary skill in the art to separate a one step process into a two step process. See MPEP 2144.04-IV-C.

It is again noted that Applicants admit, on page 1 of their specification, that "water soluble native B-glucan is of major nutritional interest. It is the chemical constituent of 'soluble dietary fiber,' SDF, considered to be responsible for the association between oats products and reduced risk for coronary hear disease. . . . A variety of health food products rich in SDF are currently on the

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market." Applicants also state that "barley and other cereals contain SDF." Therefore, it would have been obvious to those of ordinary skill in the art to produce a wort rich in B-glucan so as to produce a healthy beverage.

Response to Arguments

6. Applicant's arguments with respect to claims 1-9, 11-14 and 21-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. No claim is allowed.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The **fax phone number** for this Group is (703)-305-3602.
9. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer
Primary Examiner
May 1, 2003